IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**Case No. 1:17-cr-0046 (JCC)**
DAVID L. WEBB,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO TRANSFER

COMES NOW the Defendant, David L. Webb, by counsel, and pursuant to Fed. R. Crim. P. 21(b), and moves this Honorable Court to transfer this matter to the United States District Court for the Southern District of Florida.

BACKGROUND

On March 8, 2017, Mr. Webb was indicted by a grand jury sitting in the Eastern District of Virginia. The indictment charges Mr. Webb with two counts of inducing interstate travel to defraud, in violation of 18 U.S.C. § 2314, and five counts of interstate transmission of money taken by fraud, also in violation of 18 U.S.C. § 2314.

Specifically, the indictment alleges that Mr. Webb fraudulently caused investors to loan money to a business, G4i Capital Partners, Inc., which he "operated . . . in South Florida." Indictment ¶ 1. The indictment also alleges that, in furtherance of the scheme to defraud, investors were induced to travel between Texas and Virginia, and that certain proceeds of the scheme to defraud were transferred "in the Eastern District of Virginia and elsewhere." *See* Indictment, Counts 3-7.

Mr. Webb resides in the Southern District of Florida, and the investors identified in the Indictment appear to reside in Texas. While some facts relating to the Indictment appear to have occurred in Virginia, the bulk of the conduct did not. The Eastern District of Virginia does not appear to have a substantial relationship to the alleged offense, to the alleged offender, or to the alleged victims.

ARGUMENT

This Court should transfer this matter to the Southern District of Florida. Federal Rule of Criminal Procedure 18 provides that "[t]he Court must set the place of trial within the district [where the offense was committed] with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice." Fed. R. Crim. P. 18. In turn, Federal Rule of Criminal Procedure 21(b) provides:

> Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.

Fed. R. Crim. P. 21(b).

Because the government seeks indictments in its preferred venue, and Rule 21(b) permits transfer solely on the defendant's motion, the Rules are designed to accommodate the defendant's interests in transferring the case. Indeed, as a leading treatise explains, Rule 21(b) "implements the policy that venue should be chosen to minimize the inconvenience to the defense." Wright, Leipold, *et al.*, 2 Fed. Prac. & Proc. Crim. § 344, at 442 (4th ed. 2009); *accord United States v. Burke*, 607 F.Supp.2d 1314, 1323 (M.D. Fla. 2009) (transferring case from Middle District of Florida to Eastern District of New York in part because "four of the five defendants are residents of New York and to each Florida is an inconvenient and burdensome forum."); *United States v. Muratoski*, 413 F. Supp. 2d 8, 11 (D.N.H. 2005) ("Defendants, ordinarily, should be tried where they reside."); *United States* *v. McDonald*, 740 F. Supp. 757, 762 (D. Alaska 1990) ("The primary concern of Rule 21(b) is to "minimize the inconvenience to the defense."); *United States v. Benjamin*, 623 F. Supp. 1204, 1211 (D.D.C. 1985) (noting that court has "liberally construed [Rule 21(b)] so as to minimize inconvenience to a defendant."); *United States v. Russell*, 582 F. Supp. 660, 662 (S.D.N.Y. 1984) ("Unquestionably, it can be a hardship for defendants to stand trial far away from home. As a matter of policy, therefore, wherever possible, defendants should be tried where they reside."); *United States v. Luros*, 243 F. Supp. 160, 175 (N.D. Iowa 1965) ("Rule 21(b) of the Federal Rules of Criminal Procedure was enacted to alleviate the undue hardships which defendants sometimes suffer when forced to defend themselves in places far distant from their homes."). *Cf. Hyde v. Shine*, 199 U.S. 62, 78 (1905) (noting that even though Constitution requires trial in place where offense occurred, "we do not wish to be understood as approving the practice of indicting citizens of distant states in the courts of this District, where an indictment will lie in the state of the domicile of such person . . . . To require a citizen to undertake a long journey across the continent to face his accusers, and to incur the expense of taking his witnesses, and of employing counsel in a distant city, involves a serious hardship, to which he ought not to be subjected if the case can be tried in a court of his own jurisdiction.").

The propriety of a transfer pursuant to Federal Rule of Criminal Procedure 21(b) is committed to the discretion of the district court. *United States v. Espinoza*, 641 F.2d 153, 162 (4th Cir. 1981). In guiding that discretion, Rule 21(b) focuses on the convenience to the parties, witnesses, and the Court, and is distinct from the rule protecting a defendant's right to a fair trial. As a leading treatise explains, decisions on transfer motions under Rule 21(b) require an examination of the "circumstances of the particular case [to] determine what place of trial will best serve convenience and the interest of justice in that case." 2 C. Wright & P. Henning, Fed. Prac. & Proc. Crim. § 345 (4th ed. 2008). Moreover, "[t]here should be no general rule [in favor of retaining jurisdiction in the original district], although it is proper to require the defendant, as the moving party, to carry the burden of showing why a transfer would serve the purposes specified in the rule." *Id.* As Judge Posner of the Court of Appeals for the Seventh Circuit has explained: "Nothing in Rule 21(b) . . . place[s] on the defendant . . . the burden of establishing 'truly compelling circumstances' for such a change. It is enough if, all relevant things considered, the case would be better off transferred to another district." *In re Balsimo,* 68 F.3d 185, 187 (7th Cir. 1995).

In examining the particular facts of each case, courts look to a list of ten factors cited approvingly by the Supreme Court in *Platt v. Min. & Mfg. Co.*, 376 U.S. 240, 243-44 (1964), to guide the exercise of discretion under Rule 21(b) ("the *Platt* factors"). Those factors are:

> "(1) location of corporate defendant;[1] (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division involved; and (10) any special elements which might affect the transfer."

376 U.S. 240, 243-44 (1964). The *Platt* factors weigh in favor of transferring this case to the Southern District of Florida.

i. Residence of the Defendant: "[T]he Fourth Circuit has held that a defendant should be tried in a court close to where the defendant lives." *United States v. Ferguson*, 432 F. Supp.2d 559, 562 (E.D. Va. 2006) (GBL) (transferring to Connecticut due to "a substantial balance of inconvenience to the defendants") (internal quotations and citation omitted) (citing *United States v. Lenihan*, 19 F.3d 1430, 1994 WL 102149, at *4 (4th Cir. March 29, 1994) (unpublished)); *United States v. Lima*, No. 34 CR 800, 1995 WL 348105, at *3 (N.D.Ill. June 1, 1995) (unpublished) (transferring venue because the proposed venue "would cause less disruption of his family life."); *United States v. Russell*, 582 F.Supp. 660, 662 (S.D.N.Y.1984) (reasoning that "wherever possible, defendants should be tried where they reside"). Mr. Webb lives in North Palm Beach, Florida, which is within the federal judicial district for the Southern District of Florida.

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[1] *Platt* involved a corporation, but courts following *Platt* have applied this factor to individual defendants by looking to the defendant's residence. *See, e.g., U.S. v. Polizzi,* 500 F.2d 856 (9th Cir. 1974).

ii. Location of Possible Witnesses: The two main non-law enforcement individuals alleged to be involved in this case do not live in the Eastern District of Virginia. Specifically, the two alleged victims identified in the Indictment, M.L. and A.S., appear to reside in Texas. Moreover, while the defense does not know all the contours of the government's case or the identity of each witness it may call, it appears that the great majority (if not all) of the substantive testimony will come from witnesses with no significant connection to the Eastern District of Virginia. Accordingly, holding a trial in this district "will result in a 'substantial balance of inconvenience' because a significant number of key witnesses are located [outside the] area and not in the Eastern District of Virginia." *See Ferguson*, 432 F. Supp.2d at 565.[2]

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[2] Law enforcement witnesses weigh far less in the analysis as they always are present in the charging district of a criminal case. *See United States v. Benjamin*, 623 F. Supp. 1204, 1213 (D.D.C. 1985) ("The government-employee witnesses, like the government lawyers, have nationwide responsibilities and are equipped to operate away from home with minimal disruption of their official business."). Similarly, "inconvenience to the Government is 'given little weight when other considerations of convenience suggest a transfer.'" *United States v. Hanley*, No. 94-cr-394, 1995 WL 60019 (S.D.N.Y. Feb. 10, 1995) (quoting *United States v. Gruberg*, 493 F.Supp. 234, 243 (S.D.N.Y.1979)).

iii. Location of Events Likely to be in Issue: Mr. Webb is alleged to have committed the bulk of the allegedly fraudulent conduct from Florida, and is alleged to have directed the allegedly fraudulent communications mainly to Texas. Although the Indictment attempts to use an instance of travel to this district as a hook by which to link the entire case to this district, that travel does not represent the gravamen of the conduct, and is insufficient in itself to maintain the case in this district. See *Ferguson*, 432 F. Supp.2d at 566 ("The Court finds that basing venue on the fact that the SEC's EDGAR server happens to be in this district is insufficient. There must be a greater connection with this district, especially in this case where the majority of the alleged criminal activity took place in [other states].")

iv. Location of Documents and Records Likely to be Involved: From records obtained thus far from the government in discovery, many records likely to be involved in this case were received from out-of-state entities and witnesses. In any event, it appears that all relevant documents and records either originally existed in, or now have been converted to, electronic format. Accordingly, they can easily be produced or reproduced for purposes of trial in any district, thus reducing the apparent relevance of this factor.

v. Disruption of Defendant's Business: Mr. Webb lives and works in Florida. He has little connection to the Eastern District of Virginia and no reason to travel here other than for this case.

vi. Expense to the Parties: The court held in *Ferguson* that even when the defendants "are people of significant financial means" (which does not apply to Mr. Webb) "the government is in a better position to bear the additional expense of trying the case in [the defendant's home district]." *Ferguson*, 432 F. Supp. at 567-68 (citing *United States v. Martino*, No. S1 CR 389, 2000 WL 1843233, *7 (S.D.N.Y. December 14, 2000) (unpublished) (finding that "the government is in a better position to bear such an expense")). Mr. Webb has been appointed counsel, and does not have sufficient funds to make repeated trips to the Eastern District of Virginia. Likewise, lodging costs would constitute a significant expense during hearings and trial. Transferring this case would limit expenditure by the U.S. Marshals to transport Mr. Webb to and from this district.

vii. Location of Counsel: Mr. Webb has been appointed counsel, and would undoubtedly have counsel appointed in the Southern District of Florida.[3] The United States is represented by the Department of Justice, and would be represented in the Southern District of Florida through the United States Attorney's Office.

viii. Relative Accessibility of Place of Trial: Because the defendant resides in North Palm Beach, Florida, the Southern District of Florida is significantly more accessible as a place of trial than the Eastern District of Virginia. *See Ferguson*, 432 F. Supp. 2d at 568; *United States v. Hurwitz*, 573 F.Supp. 547, 554 (S.D. W.Va.1983) (holding that courts should be "[m]indful of the location of witnesses and counsel" in weighing the relative accessibility of the place of trial). In fact, one of the courthouses for the Southern District of Florida (in West Palm Beach, Florida) is within a few miles of Mr. Webb's residence. The area is also easily accessible by commercial air travel and other means of commercial, public and private transportation (the courthouse is within a few miles of both an international airport and Interstate 95).

ix. Docket Condition of Each District or Division Involved: The Southern District of Florida appears to have a more manageable criminal docket than the Eastern District of Virginia. For example, the latest statistics show that the Eastern District of Virginia is falling behind in managing its criminal docket, whereas the Southern District of Florida's criminal docket appears stable. Specifically, while the number of newly-filed criminal cases decreased in this district by almost five percent between 2015 and 2016 (the latest years for which statistics are available), the number of pending criminal cases *increased* by eight percent during that same time. *See* Federal Judicial Caseload Statistics, Table D, http://www.uscourts.gov/sites/default/files/data_tables/fjcs_d_0331.2016.pdf (visited May 2, 2017). The Southern District of Florida, on the other hand, has a much more stable docket, with very small increases in those years in both cases filed (increase of .5%) and cases pending (increase of 1.4%). *Id.* Moreover, according to the latest available statistics, criminal cases in the Southern District of Florida are now resolved more quickly than in this district (5.3 months there versus 5.8 months here). *See* Federal Court Management Statistics, http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2016.pdf (visited May 2, 2017). Indeed, the Southern District of Florida has remained relatively stable in that metric since 2011 (when criminal cases also took 5.3 months, on average, from filing to disposition), while the Eastern District of Virginia's docket has slowed down considerably during that same time period (4.7 months from filing to disposition in 2011 versus 5.8 months in 2016). *Id.*

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[3] Mr. Webb has also been in contact with an attorney in Alabama about representing him in this matter, although it is unclear at this time whether he will be able to retain that attorney.

In sum, most if not all of the *Platt* factors support transferring this matter. The defendant and the alleged victims reside in Florida and Texas, respectively, and the alleged fraudulent conduct occurred principally in those jurisdictions. Allowing the case to move forward in the Eastern District of Virginia would result in far greater inconvenience to Mr. Webb than trying the case in Florida would cause the government, witnesses or victims.

As such, this case resembles another case from this District, *United States v. Chow*, 09-CR-406 (E.D. Va. Oct. 28, 2009) (Brinkema, J.) (Doc No. 68 attached), in which the defendant resided in Texas and was charged in this District with conspiracy to engage in music piracy. In that case, the Court found that the balance of *Platt* factors weighed heavily in favor of a transfer because a defendant resided in Texas, key evidence was obtained in Texas, material conspiratorial acts occurred in Texas, the defendant's family resided in Texas, and the defendant's travel and accommodation expenses would be significant. Finally, the Court noted that the allegations involving the Eastern District of Virginia were "significantly outweighed by the far more significant activities of the defendants" outside this district. The same reasoning warrants a transfer of venue in this case. Accordingly, based on all of the *Platt* factors, this Court should transfer this matter to the Southern District of Florida.

CONCLUSION

For all of the foregoing reasons, Mr. Webb respectfully requests that the Court transfer this matter to the United States District Court for the Southern District of Florida.

Respectfully submitted May 4, 2017.

By: /s/
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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2017, I will electronically file the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

AUSA Jack Hanly
Office of the United States Attorney
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Alexandria, Virginia 22314

Pursuant to the Electronic Case Filing Policies and Procedures, a courtesy copy of the foregoing pleading will be delivered to Chambers within one business day of the electronic filing.

By: __________/s/__________

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